

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

**DIRECTOR OF THE DEPARTMENT
OF INSURANCE, FINANCIAL
INSTITUTIONS & PROFESSIONAL
REGISTRATION
STATE OF MISSOURI,**

Petitioner,

vs.

**FRANK S. NORPHY,
Respondent.**

Serve:

2404 S. Harvard Avenue
Independence, Missouri 64052

Case No.: _____

FILED
APR 21 2009
ADMINISTRATIVE HEARING
COMMISSION

COMPLAINT

The Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists to discipline the license held by Respondent, Frank S. Norphy, because:

INFORMATION RELEVANT TO ALL COUNTS

1. Petitioner is the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration. The Director has the duty to administer Chapters 374 and 375, RSMo, which includes the supervision, regulation, and discipline of insurance companies, agencies, and producers licensed to operate and conduct business in the State of Missouri.

2. The Department of Insurance, Financial Institutions and Professional Registration issued Respondent Frank S. Norphy an insurance producer license (No.

PR359303) on November 15, 2005. Such license was suspended for tax non-compliance on June 12, 2008 and is set to expire on November 15, 2009.

3. The Centers for Medicare & Medicaid Services (“CMS”) is the federal agency responsible for administering Medicare and Medicaid, now known as MO HealthNet.

4. The Medicare Marketing Guidelines reflect CMS’s interpretation of the marketing requirements and related provisions of the Medicare Advantage and Medicare Prescription Drug Benefit rules. 42 C.F.R. 422, 423. The Medicare Marketing Guidelines prohibit door-to-door solicitation without first receiving an invitation or request from the consumer to provide assistance in his or her home. The Medicare Marketing Guidelines also explain how benefits apply to dual eligible individuals.¹

5. State insurance departments coordinate regulatory efforts with CMS. While CMS regulates the insurance products and marketing materials, state insurance departments retain authority over company financial solvency and the discipline of licensed insurance producers for improper sales practices.

6. With the exception of Respondent and Department employees, all individuals mentioned in this Complaint are dual eligible individuals.

7. The Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Supp. 2008).

COUNT I

8. Respondent intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance, an unfair trade practice as defined by

¹ “Dual eligible” means a person who is eligible for benefits under both Medicare and Medicaid (now, MO HealthNet).

§ 375.936(6), RSMo (2000), and which is grounds for disciplining his insurance producer license pursuant to §§ 375.141.1(5), and (7) RSMo (Supp. 2008).

9. The facts are as follows:

- a. On or about July 12, 2007, Respondent visited Charlene Marquess' home, without an appointment, for the purpose of selling her a Medicare Advantage insurance policy. Respondent explained the insurance policy to Ms. Marquess and she enrolled believing she would maintain her traditional Medicare benefits; however, under the policy Ms. Marquess was not permitted to maintain her traditional Medicare benefits because Medicaid wouldn't pay the co-payments associated with the Medicare Advantage insurance policy. Medicaid would pay co-payments associated with traditional Medicare.
- b. September 4, 2007, Respondent sold a Medicare Advantage insurance policy to Irene Fults. Respondent told Ms. Fults that, under the policy Medicaid would pay co-payments. This was a false statement.
- c. March 28, 2008, Respondent sold a Medicare Advantage insurance policy to Joanna Lindsey. Respondent told Ms. Lindsey that her doctor would accept the policy and that the policy required no out-of-pocket costs – both of which were false statements.

COUNT II

10. Respondent made false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, agency, broker or other person, an unfair

trade practice as defined by § 375.936(7), RSMo (2000), and grounds to discipline Respondent's insurance producer license pursuant to § 375.141.1(7), RSMo (Supp. 2008).

11. The facts are as follows:

- a. Petitioner incorporates the facts alleged in paragraph 9, above, as though fully set forth herein.
- b. On or about July 25, 2007, Respondent met with Jennie Wheatley in her home, without an appointment, for the purpose of selling her a Medicare Advantage insurance policy. Respondent asked Ms. Wheatley if she had heart problems and Ms. Wheatley indicated that she did not have any heart problems. Respondent completed an insurance application for Jennie Wheatley that falsely indicated that Ms. Wheatley had Chronic Obstructive Pulmonary Disease (COPD).

12. Respondent's false statements to proposed insureds and on insurance policy applications for the purpose of obtaining commissions constitute an unfair trade practice and are grounds to discipline his insurance producer license pursuant to § 375.141.1(7), RSMo (Supp. 2008).

COUNT III

13. Respondent made material misrepresentations and engaged in a pattern or practice of making false statements of material facts in connection with the offer, sale, solicitation or negotiation of insurance in violation of § 375.144, RSMo (Supp. 2008). Such conduct is grounds to discipline Respondent's insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2008).

14. The facts are as follows:

- a. Petitioner incorporates the facts alleged in paragraphs 9 and 11, above, as though fully set forth herein.

COUNT IV

15. Respondent used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of business in this state, by violating Medicare Marketing Guidelines. Such conduct is grounds to discipline Respondent's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2008).

16. The facts are as follows:

- a. Petitioner incorporates the allegations in paragraphs 9 and 11, above, as though fully set forth herein.
- b. On or about July 12, 2007, Respondent visited Ada Walters' home, without an appointment, for the purpose of selling her a Medicare Advantage insurance policy. Respondent told Ms. Walters that God had sent him. Without asking about Ms. Walters' health, Respondent completed an insurance application for Ms. Walters and indicated that she had heart failure.
- c. On May 14, 2008, Respondent met with Diana Brady, Department Special Investigator, and Mary Kempker, Department Consumer Affairs Division Director, to discuss numerous complaints the Department received regarding Respondent's sales practices.
- d. During the May 14, 2008, meeting, Ms. Brady and Ms. Kempker educated Respondent regarding the CMS Medicare Marketing Guidelines and

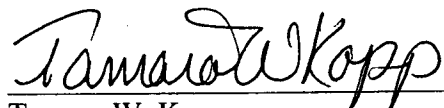
Medicare and Medicaid benefits and limitations under Medicare Advantage plans. During the meeting, and while under oath, Respondent indicated that he understood the CMS Medicare Marketing Guidelines and benefits as applied to dual eligible individuals.

- e. On June 23, 2008, the Department received a complaint on behalf of Vickie Bradshaw regarding Respondent's sales practices when he visited Ms. Bradshaw's home on June 19, 2008.
- f. On June 23, 2008, the Department received a complaint on behalf of Arthur Hazard regarding Respondent's sales practices when he approached Mr. Hazard without an appointment on June 19, 2008.

17. Respondent's continued failure to abide by the CMS Medicare Marketing Guidelines regarding door-to-door sales and sales to dual eligible individuals evidences his use of fraudulent, coercive, and dishonest practices and shows incompetence and untrustworthiness in the conduct of business in this state. Such conduct is grounds for discipline of his insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2008).

WHEREFORE, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established cause to discipline Respondent Frank S. Norphy's Missouri insurance producer license pursuant to §§ 375.141.1(2), 375.141.1(5), 375.141.1(7), and 375.141.1(8), RSMo (Supp. 2008).

Respectfully submitted,

A handwritten signature in black ink, reading "Tamara W. Kopp", written over a horizontal line.

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